

IN THE MATTER OF	:	BEFORE THE
<b>ALAN F. NETHEN,</b>	:	HOWARD COUNTY
<b>GABLE SIGNS AND GRAPHICS</b>	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioner	:	BA Case No. 12-001S

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**DECISION AND ORDER**

On April 19 and May 24, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Alan F. Nethen (Petitioner) for a Sign Code variance to erect a 15'(H) x 4.5'(W), 150-square-foot freestanding monument sign with a total height of 16.5 feet, one foot from the US 40 right-of-way (ROW) in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

Petitioner certified to compliance with the notice of advertising and posting requirements of the Howard County Code.

The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Alan F. Nethen, Tim Weigard, and Cliff Dehoff testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Excerpts from the Route 40 Design Manual

- 1A. View of eastbound US 40 from Property
2. Aerial view of Property
3. Existing sign

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the south side of US 40 near St. Johns Lane. It is reference as Tax Map 24, Parcel 760 and is also known as 9125 Baltimore National Pike.

2. Property Description. The .823-acre Property is improved by an M&T bank, which is set back from US 40. The existing M&T sign is located zero feet from the US 40 ROW, a few feet back from a grassed area (apparently located in the ROW). A large parking lot is located in front of the bank.

3. Vicinal Properties. To the north, across US 40, is a one-story shopping center. West of the Property, the B-2 zoned property is improved with the two-story Masonry Building, a commercial condominium building. The RA-14 TNC (Residential: Apartments) zoned property to the south is improved by a cemetery. To the east, the B-2 zoned property is improved with a one-story BP gasoline service station.

4. Motorists' Views. Motorists traveling west on US 40 are unable to view a complying sign owing to a steep grade on US 40 until they pass St. Johns Lane. Motorists at the US 40 left turn lane to St. Johns Lane also block the view of the existing M&T sign for westbound motorists. Motorists traveling east on US 40 are unable to view a complying sign owing to the

presence of guard rails, bushes and trees.

5. Speed Limit. The speed limit on US 40 is 45 MPH.

6. The Sign Variance Request. Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect a 15'(H) x 4.5'(W) freestanding monument sign with a total height of 16.5 feet, one foot from the US 40 right-of-way (ROW), rather than the 67.6' setback required in relation to the aggregate sign area and the 33' setback in relation to the sign height. Petitioner is also seeking a variance to increase the total sign area square footage from 110 to 150. The high, narrow double green sign faces would feature the M&T logo on the bottom section with the words "M&T Bank" running up each face.

7. Mr. Nethen testified that Petitioner is seeking to replace the existing sign with a modern sign featuring the new M&T branding. Several road widenings have brought the existing sign right to the property line.

8. The Hearing Examiner discussed the technical staff report (TSR) with Petitioner during the proceeding. The TSR reasons the sign as proposed would not be visible to westbound motorists and recommends a sign height of 26 feet. Attached to the TSR is a Department of Planning and Zoning (DPZ) February 17, 2012 memorandum from Brad Killiam, to Robert Porter, Department of Inspections, Licensing, and Permits (DILP). The memorandum states DPZ's general support for the sign's design because it is consistent with the Route 40 Design Manual, but concludes that the sign's dimensions will "dramatically increase the visible square footage over the existing sign." DPZ therefore requested DILP to verify that visibility will not be impaired and to discuss alternate locations for the proposed sign. Because Mr. Nethen was unfamiliar

with the US 40 Manual, the hearing was continued.

9. At the May 24, 2012 continuation hearing, Mr. Nethen introduced into evidence excerpts from the Route 40 Manual and photographs of the Property. Petitioner's Exhibits 1-3. In his opinion, the proposed sign design comports with the Manual's signage design recommendation. With respect to the sign's size possible relocation, Mr. Nethen stated it could not be reduced in size, nor could it be relocated elsewhere on the Property.

#### **CONCLUSIONS OF LAW**

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

**1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.**

The proposed sign would be located on a highway that has a dependency on nonlocal use in accordance with Section 3.513(b)(1). The steep grade of US 40 makes it difficult, if not impossible, for eastbound motorists to view a complying sign safely. These conditions lead to practical difficulties and unnecessary hardships in complying strictly with the provisions of this subtitle.

**2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.**

Bushes, guard rails and trees block the visibility of a complying sign, causing practical difficulties and unnecessary hardship in complying with this subtitle. Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

**3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.**

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

**4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.**

There is no evidence that the granting of the variances would adversely affect the appropriate use of development of adjacent properties, nor result in a dangerous traffic condition.

**5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.**

The proposed signs are intended to comport with updated corporate signage requirements. The proposed signs are of a reasonable size to convey this information.

**6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulties are a result of unique Property conditions, vicinal obstructions, grade changes and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

**ORDER**

Based upon the foregoing, it is this **31<sup>st</sup> day of May 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Alan F. Nethen, Gable Signs and Graphics, for a Sign Code variance to erect a 15'(H) x 4.5'(W), 150-square-foot freestanding monument sign with a total height of 16.5 feet, one foot from the US 40 right-of-way (ROW) in a B-2 (Business: General) Zoning District is hereby **GRANTED;**

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
\_\_\_\_\_  
Michele L. LeFaivre

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.